

## **REMARKS**

### ***Amendments to the Claims***

Upon entry of the foregoing amendment, claims 1-55 are pending in the application. Of the pending claims, claims are independent.

#### ***I. Claim Rejections under 35 U.S.C. § 112***

The Examiner has rejected claims 17-18 and 41-42 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#### ***II. Claim Rejections under 35 U.S.C. § 102(b)***

The Examiner has rejected claims 1-2, 5, 7-9, 11, 15-18, 25-26, 29, 31-33, 35, 39-40 and 43 as being anticipated by U.S. Patent No. 5,816,653 ("the Benson patent"). The Benson reference is specifically directed to a lumbar support cycling program that moves in a way that is imperceptible to the seat occupant. See, '653 patent at column 2, lines 16-19 and column 6, lines 12-18. Accordingly, movements are short (6 to 10 millimeters, see, column 5, lines 61-65) and quick. The "pulse" of electricity activating a movement is 1 to 1.5 seconds long. This is apparent from figure 5, wherein the pulse with electricity is on, indicated by reference numerals 46, 58 and 64 is short. The period of time when the current is 0 between the pulses indicated by reference numerals 44, 60 and 66 is longer. The claims also reflect this, see, columns 1-3 and the specification at column 4, lines 61 through column 5, line 8. The paragraph

referenced by the Examiner, at column 5, lines 36-48, has, unfortunately, a clerical error reversing the short and long periods.

Accordingly, the Benson patent discloses and claims a series of movements that are so short and quick that is to be imperceptible to the seat occupant. In contrast, the present application is to a control system for movements that are perceptible because they are long and slow. Movements of 12 millimeters and greater are perceptible. See, present application, page 2, lines 24-25. That the movement be long, i.e. preferable 10 to 25 seconds, is supported at original claims 11, 24 and 35.

The amendments to claim 1 structurally recite perceptible movement and further recite the range and duration defining perceptibility.

### ***III. Rejections under 35 U.S.C. § 103***

The Examiner has rejected claims 6, 10, 30 and 34 as being unpatentable over the Benson patent. The current amendments recite structure that is patentably distinguishable over Benson by reciting, in claim 1 from which they depend, movement of perceptible length and duration. Benson actually teaches away from the claim by teaching imperceptible movement, see above.

### ***IV. Conclusion***

Accordingly, Applicants respectfully submit that independent claims 1, 18, 41 and 43 are allowable over the prior art of record, including the Benson patent. For similar reasons, and for the additional reasons set forth above, Applicants urge that the dependent claims are also allowable.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



By: Robert C. Haldiman, Reg. No. 45,437  
Husch & Eppenberger, LLC  
190 Carondelet Plaza  
St. Louis, MO 63105  
314-480-1641  
314-480-1505 FAX